Issue Paper Number **99-051**

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

☐ Board Meeting
☐ Business Taxes Committee
☐ Customer Services Committee
☐ Legislative Committee
☒ Property Tax Committee
☐ Technology & Administration Committee
☐ Other

PROPERTY TAX RULE 153

LIQUEFIED PETROLEUM GAS TANKS

I. Issue

Should the Board authorize publication of proposed Property Tax Rule 153 (Proposed Section 153, Title 18, of the California Code of Regulations)?

II. Staff Recommendation

Staff recommends that a new rule regarding liquefied petroleum gas tanks, Property Tax Rule 153 as shown on Attachment A, "SBE Staff Version," be authorized for publication and submitted to the Office of Administrative Law for publication in the California Regulatory Notice Register.

III. Other Alternative(s) Considered

1. Do not adopt a new rule, or any specific language, for purposes of clarifying treatment of a special interest property. Liquefied petroleum gas tanks, like any other property, should be valued and assessed in accordance with the guidelines provided in Rule 10.
   [California Assessors' Association's (CAA) position]

2. Adopt, and authorize for publication, Industry's proposed language for a new rule regarding liquefied petroleum gas tanks, Property Tax Rule 153 as shown on Attachment B, "Industry Version" (deletions and modifications to staff's proposed language are shown on Attachment C). Submit the new rule to the Office of Administrative Law for publication in the California Regulatory Notice Register. (If the Board opposes the adoption of a new Rule (153), it could adopt Industry's proposed language for insertion into Rule 10.)
   [Industry is represented by the Western Propane Gas Association]

IV. Background

Under Government Code section 15606, subdivision (c), the Board is given the authority to prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing. Providing guidance on the valuation of propane tanks is responsive to the petition for regulatory action by the propane industry requesting that the Board exercise its rulemaking authority to adopt or amend a regulation that would subject propane tanks to trade level valuation. In addition, there are conflicting unpublished court decisions relating to the trade level of these tanks (*Platz* v. *County of San Luis Obispo* and *Campora, Inc.* v. *Assessment Appeals Board of the County of Shasta).*

Accordingly, staff was directed to review Property Tax Rule 10, *Trade Level for Personal Property* (Section 10, Title 18, of the California Code of Regulations) and Property Tax Rule 124, *Examples* (Section 124, Title 18, of the California Code of Regulations). Consistent with this direction, the staff of the Property Taxes Department and Legal Division drafted proposed amendments to Rule 10 and concluded no amendment was necessary to Rule 124. (Current issues related to these rules are presented in separate issue papers.)

A draft of Rule 10, which included language regarding the valuation of propane tanks, was initially scheduled to be heard at the September meeting of the Property Taxes Committee. Due to on going discussions and concern about the issues, however, the discussion of Rule 10 and related issues was rescheduled to the Committee's calendar in November.

Staff was directed by management to continue working with interested parties in an effort to resolve issues and wording differences related to the rule until October 6, 1999. As part of the process of reviewing and revising Rule 10, the treatment of propane tanks (i.e., liquefied petroleum gas tanks) remained a controversial issue. Staff, after consensus with Industry groups (Cal-Tax and Western Propane Gas Association), suggested a new rule be drafted to properly address the topic.

Staff drafted Rule 153 regarding liquefied petroleum gas tanks and distributed the draft via Letter to Assessors (LTA) for review by interested parties. After receiving comments from the California Assessors' Association (CAA) and the Western Propane Gas Association (also referred to as "Industry"), disagreement remains as to:

1. whether a new rule, or any specific language, should be adopted and published (see Alternative 1, CAA position), and

2. if the new rule is published, what language should be adopted (see Staff Recommendation, and Alternative 2, Industry position)? Further if the Board opposes the adoption of a new Rule (153), should the language be adopted and inserted into Rule 10?

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends that a new rule regarding liquefied petroleum gas tanks, Property Tax Rule 153 as shown on Attachment A, "SBE Staff Version," be authorized for publication and submitted to the

Office of Administrative Law for publication in the California Regulatory Notice Register. Staff's language for the proposed rule clarifies issues related to this type of property which are not specifically addressed in the statutes and rules. It provides for assessment uniformity for liquefied petroleum gas tanks.

Staff briefly researched the business practices of several propane gas companies to determine the identity of the consumers of propane gas tanks, the costs that are typically incurred by the propane gas companies, and the costs that are typically incurred by their customers. Our research indicates that some propane gas companies pay sales tax on the propane tanks when purchased, while others which lease the tanks to customers buy the tanks ex-tax for resale and collect sales tax on the lease payments. In addition, a company may have tanks that it owns and tanks that it leases. In short, our research indicates a lack of uniformity as to how propane companies do business and confusion among the counties as to the valuation of the tanks and related equipment. Staff's draft ensures assessment uniformity of propane gas tanks by identifying specific criteria to determine the tank consumer's identity for property tax purposes.

B. Pros of the Staff Recommendation

Staff's recommendation creates a new rule regarding liquefied petroleum gas tanks to ensure assessment uniformity for the tanks and related property. Liquefied petroleum gas tanks similar to most other types of property must be valued at the price to the consumer of the property, in most instances (an exception is included in Rule 10 regarding property leased for less than six months). Staff's language provides criteria for determining the identity of the consumer of the tank for assessment purposes, since the consumer may not be easily identifiable.

The language of the rule identifies the ultimate consumer by giving criteria to identify whether the property is leased or rented. It is necessary to make this determination based on an analysis of all the facts. In any contract, some of the facts may be indicative of a lease situation where the lessee is the ultimate consumer while others may be indicative of an "owner" as the ultimate consumer. Reliance on any one factor may lead the assessor to the wrong conclusion.

Focusing on rental or lease as the key determinative for the trade level at which the tanks should be valued is consistent with staff's regulatory scheme. If the tanks are leased or rented, they are to be valued at the retail level (i.e., the lessee's trade level); if they are not leased or rented, they are to be valued at the wholesale level (i.e., the lessor's trade level). Staff's language determines whether the tank is leased or rented by looking at who pays for installation and maintenance, sales tax, and whether a periodic charge is made to the retail gas consumer for use or possession of the tank. It is clear that a periodic charge is "rent" if it is so designated. Staff believes that maintenance fees, and similar periodic charges are a substitute - or a pseudonym - for rent.

If, by the criteria in the proposed rule, the property is leased or rented, this indicates that the lessee is the *user*, or ultimate consumer, of the property. This is consistent with court decisions in sales tax cases which are relevant in this situation. For example, in *Culligan Water Conditioning* v. *State Bd. of Equalization* ((1976) 17 C.3d.86), the court discussed the *user* of property. The court said, at page 94, that the customer (the lessee):

> "…has the use of the exchange unit (personal property) which is installed in his plumbing system and has dominion and control over it while it is there. Certainly the customer *uses* the exchange unit by having the water pass along the lead-in pipes, through the conditioning unit, and thereafter throughout the entire water system of his residence. He also has dominion and

> control over the unit. He may permit it to remain inactive simply by not using the water in his house, as he might do during long absences during the day or over many days while away from home, or during long hours of nonuse during the night…..
>
> …The fact that plaintiff has an owner's control of the unit and the exclusive right to replace one unit with another so as to regenerate the exhausted material at its plant, does not derogate in any way from the customer's right to use and control the unit while it is on his premises."

In *Bar Master, Inc.* v. *State Bd. of Equalization* (1976) 65 Cal.App.3d.408, the court stated:

> "…the customer's (lessee's) object was to have use and control of a functional and operating beverage dispensing unit in his (customer's) place of business, and that the "service" provided by Bar Master was incidental."

Staff's proposed language also clarifies the trade level at which necessary ancillary equipment is to be valued by defining the term "LPG tank" to include this property. Definition of this term is essential. If the tanks are considered "consumed" by the gas company, for example, ancillary equipment should likewise be assessable at the same level. Without language defining "LPG tank" as including ancillary equipment, there may be disputes on this issue. Gauges, etc., could be valued at the retail consumer level while the tank is valued at the wholesale level. It may be true that the term is clear to some in the industry (that is, that "tanks" include the other apparatus' listed in staff's language), but this explanatory language will avoid confusion that may arise for those unfamiliar with the industry and its equipment. It will also provide "clarity" as required by Government Code Section 11349.1 and Office of Administrative Law (OAL).

Finally, staff's recommendation refers to Property Tax Rules 4, 6, 8, and 10. These rules are basic valuation guidelines. Reference to Rule 10 is appropriate since it discusses trade level and applies to all personal property (or all property as proposed by staff in issue paper 99-050). "LPG tanks" and ancillary equipment are not subject to special treatment. Currently, any property classified as personal property is subject to the requirements of Rule 10, and some of the ancillary equipment is personal property.

Currently Rule 10 states that when property is leased or rented for a period of less than six months so that its tax situs is at the place where the lessor normally keeps the property (Rule 204), it shall be valued at the value to the lessor. Proposed revisions to Rule 10 (Formal Issue Paper 98-050) reword but do not change the meaning of this provision. Referring the reader of Rule 153 to Rule 10 is, therefore, important. For instance if it is determined that a property is leased, pursuant to Rule 153 (b) & (c), and the lease term is six months or less, the value should be estimated at the lessor's trade level according to Rule 10. If the duration of the lease is more than six months, the value should be estimated at the lessee's trade level according to Rule 10. If reference to Rule 10 is deleted from Rule 153(d), confusion may occur for those unaware of the requirements of Rule 10.

C. Cons of the Staff Recommendation

Staff's draft does not specifically state whether or not the gas companies are to be treated as the consumers of LPG tanks for property tax purposes in all cases. Instead, a list of criteria is to be used to identify the ultimate consumer of the tank. It is the assessor's responsibility to evaluate all the data provided in a particular situation to determine the "ultimate consumer" on a case-by-case basis. This may cause a problem for mass appraisal purposes.

D. Statutory or Regulatory Change

Action by the Board on the attached Property Tax Rule will authorize publication of a new rule, Rule 153, Title 18 of the California Code of Regulations.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

See attached Revenue Estimate.

G. Taxpayer/Customer Impact

None.

H. Critical Time Frames

The lien date is January 1 for the assessment year July 1 through June 30. In order for assessors to have this guidance for the processing of the 2000-01 roll the Board should authorize publication of amendments to the Rule at its November 1999 meeting.

VI. Alternative 1

A. Description of the Alternative

Do not adopt or authorize publication of a new rule, or any specific language, for purposes of clarifying trade level treatment of liquefied petroleum gas (LPG) tanks.

B. Pros of the Alternative

The CAA opposes adoption of proposed Rule 153 (or any specific language) and suggests that propane tanks, like any other property, be valued and assessed in accordance with the guidelines provided in Rule 10.

[The following text was submitted by the California Assessors' Association (CAA):]

> It is CAA's position that a rule should not be adopted for purposes of clarifying the treatment of a special interest property in order to determine the trade level. If the reason for the separate rule is to promote uniformity of assessment practices, then the CAA believes that an LTA is a better forum. The CAA is concerned that this industry is being afforded special consideration. Trade level should be determined based on Rule 10 and not based on how a business chooses to bill its

customers. A trade level adjustment for propane tanks should not be determined based upon whether sales tax is required or collected. The trade level should be determined for propane tanks on the same basis as other property. There is no justification for treating propane tanks differently than other assessable property.

If proposed Rule 153 is adopted, it could be argued that the test for determining the ultimate consumer, for purposes of trade level adjustments, should be applied to various other leased or loaned property, i.e., coffee makers, soft drink dispensers, water coolers, cardboard box folding machines, sorters and medical test equipment to name a few. The proposed rule would have Assessors essentially value property at a lower value when the owner is reimbursed for the loaned equipment through product sales.

Proposed Rule 153 states that propane tanks will be valued at the trade level of the ultimate consumer as defined. In order for the consumer of propane (the retail customer where the tank is located) to be considered the ultimate consumer of the tank, the propane tank must be considered rented or leased. The rule then defines the conditions under which a tank would be considered rented or leased. The effect of the rule is that a propane tank owned by a retailer of propane and located on the property of a customer can not be assessed at its retail market value unless one of the prerequisites in the rule is satisfied. This artificial definition is contrary to the trade level definitions in Rule 10.

Rule 10 states that the Assessor shall give recognition to the trade level at which the property is situated. Paragraph (d) of Rule 10 states that property leased, rented, or loaned for an extended but unspecified period or leased for a term of more than six months, having situs at the lessee's situs as provided in regulation 204, shall be valued at the same trade level as the lessee. In other words the ultimate consumer for trade level purposes of a propane tank should be the user of the tank, the propane customer, since in most instances the tanks are situated at the customer's location and is there for an extended but unspecified period whether leased or loaned. Rule 10 looks to the physical use of the tanks.

Rule 153 will require the Assessor to value identical tanks at different values depending on whether a propane company charges a rental fee for a tank versus a propane company that does not charge a separate rental fee for a tank. Here is an example of the inequity that this rule will promote:

> There are three residences located in the same relative area within a county. One of the residential property owners decides to own the propane tank and pays $800 for the tank located at their residence. The second resident "leases" a tank from Acme Propane Company for $1 a month. The third resident has a tank on loan from ABC Propane Company for which there is no requirement to pay any type of specific rent. ABC Propane simply has an arrangement whereby the customer has to buy LPG exclusively from them. History shows that both the loaned tank and the leased tank remain in use at the customer's site for more than six months.
>
> Under proposed Rule 153, the two tanks would be valued differently than the third tank. Using the cost approach, the tank that was leased for a nominal amount would be assessed at $800 as would the tank that was owned. The tank on loan, with no rent or lease payment or other periodic payment for the tank, would be assessed using the cost to the propane company. The result is property at the same trade level pursuant to Rule 10 would be valued differently because of the definitions in Rule 153.

It is somewhat ironic that for years the State Board staff has recommended trade level adjustments for propane tanks and criticized Assessors in Assessment Surveys for not recognizing the consumer trade level when assessing propane tanks. For example, in the 1992 Fresno County Survey, the SBE staff said:

> "Most propane tanks are loaned or rented at a minimal charge to customers of the propane gas company. The lessee has possession of the tanks as long as the lessee uses the gas company's products."
>
> "Property Tax Rule 205 provides guidance as to the taxable situs of movable property such as loaned or rented propane tanks. Generally, when property is at a situs, such as when the propane tanks are with a customer for a period of six months or more, the property has situs there whether the use extends through or commences with the lien date. Property Tax Rule 10 requires county assessors to give recognition to the trade level at which property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level. In the case of propane tanks, the consumer level is reached when the customer rents them."
>
> "The Fresno County auditor-appraisers use the propane companies' reported cost to value all propane tanks. This is not proper since the ultimate consumer trade level is not with the propane gas companies. The auditor-appraisers must determine the trade level based on the location and use of the propane tanks, not on the ownership. A different value will be found when the proper trade level is applied."

In 1998 the Survey Team made sure that Fresno County had implemented the above suggestion from the 1992 Survey and found that the County had properly assessed the propane tanks.

In addition, over the years counties have received advisory letters from State Board legal staff regarding the proper trade level for propane tanks. Specifically an April 10, 1995 letter to San Luis Obispo County from James Williams, SBE Staff Counsel III, makes it clear that even when propane tanks are placed at a customers site without charging a rental fee, the tanks should be valued at the customer's trade level.

In summary the CAA offers no alternative language to proposed Rule 153 since the concept put forth is fundamentally flawed and in conflict with Rule 10 (both existing and proposed). Proposed Rule 153 will set a double standard whereby identical property (propane tanks) will be valued differently based solely on whether a propane company "leases or rents" the tank or if, by definition, it is not considered leased or rented. The tanks serve the same purpose, are situated similarly, and should be valued the same for assessment purposes.

C. Cons of the Alternative

The purpose of drafting a rule regarding liquified petroleum gas tanks (both staff and industry's versions) is to provide assessment uniformity. Without adoption and publication of this rule, and no mention of this topic in the amendment of Rule 10, the Board is not providing direction or assistance in resolving the current conflict regarding the proper application of trade level to propane tanks. It, therefore, would not further the purpose of rulemaking by the Board, which is to promote uniformity and implement, interpret, or make specific the law being administered.

The Board is engaging in rulemaking in response to a request from industry to resolve a disparity in treatment of propane tanks from county to county. In addition, there are conflicting unpublished court decisions relating to the trade level of these tanks. It is appropriate for the Board to adopt rules to clarify the law where there is disparity in treatment and it is completely appropriate for the Board to attempt to clarify the law to avoid further litigation. It is not inappropriate or unusual to promulgate rules for the clarification of taxation of specific industries or items of property. See, for example, Rules 466, 468, 469, 471 and 473. There are a number of examples in the sales and use tax regulations as well.

The CAA argues that (1) the information regarding assessment of propane tanks should be distributed via LTA, (2) that sales tax billing should not be the sole determinate of trade level, and (3) that the rule will erroneously be applied to other properties. Staff disagrees with each of these statements. Staff addresses each as follows:

(1) Information regarding this subject should not be distributed via LTA since an LTA is not enforceable, and thus, would not resolve the lack of uniformity to which the rule is addressed.
(2) Whether sales tax is collected is simply one indicator of whether the tank is leased or not. It is not the sole determining factor.
(3) Rule 153 is strictly applicable to LPG tanks. If valuation of other properties need to be clarified, further rulemaking would be appropriate.

Further, the example of "inequity" advanced by the assessors is not an inequity at all. It is consistent with the theory that the tanks should be assessed at the appropriate trade level. What Rule 153 does is provide guidance on determining the trade level. The result that the CAA finds to be "inequitable" is precisely the result intended by the proposed rule: if the tank is owned and maintained by the company, and not leased or rented to the customer, it should be valued at the wholesale level. If it is leased or rented to the consumer of the gas, it should be valued at the retail level.

The 1992 Fresno County Assessment Practices Survey quoted by the CAA states: "In the case of propane tanks, the consumer level is reached when the customer rents them." That is precisely what the proposed rule provides. The staff wording is designed to determine if the tanks are actually leased or rented.

D. Statutory or Regulatory Change

Action by the Board on the attached Property Tax Rule will amend Section 10, Title 18 of the California Code of Regulations.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact

None.

H. Critical Time Frames

The lien date is January 1 for the assessment year July 1 through June 30. In order for assessors to have this guidance for the processing of the 2000-01 roll the Board should authorize publication of amendments to the Rule at its November 1999 meeting.

VII. Alternative 2

A. Description of the Alternative

Adopt Industry's proposed language for a new rule regarding liquefied petroleum gas tanks, Property Tax Rule 153 as shown on Attachment B, "Industry Version".

Differences between staff's proposed Rule 153 and Industry's proposed Rule 153 are arrayed on the attached matrix (Attachment C). Industry's version (Attachment B) differs from staff's version (Attachment A) in three respects:

(1) listing "related equipment" in section (a) of the rule,
(2) basing the determination of "ultimate consumer" on more than just payment of sales or use tax, or a separately stated lease or rental fee on the tank (section (b) of the rule), and
(3) reference to Rule 10, *Trade Level of Personal Property*, in section (d) of the new rule.

B. Pros of the Alternative

Currently propane tanks are not valued uniformly in the state of California. A rule regarding this type of property providing guidance on valuation of propane tanks to promote assessment uniformity is consistent with the Board's duty.

[The following text was submitted by the Western Propane Gas Association.]

> CAA first states that proposed Rule 153 is entirely unnecessary as the tanks are already properly dealt with under Rule 10. In doing so, the CAA seems to be taking the position that the application of Rule 10 to propane tanks is by no means confusing or problematic. Industry has already noted that history tells a different story. Contrary to the CAA's assertion, there is ample justification for treating propane tanks differently, to-wit, that no other type of personal or real property is similar.

The CAA itself provides good examples of just how unique propane tanks are. In its general comments, the CAA claims that coffee makers, soft drink dispensers, water coolers, cardboard box folding machines, sorters and medical test equipment are potentially similar. Members of the industry have already challenged this type of argument in Court and won. In the *Platz* case cited above, appellants argued that the *Xerox* and *Ex-Cell-O* cases relied upon by the Assessor were factually distinguishable. In the *Platz* case the Court found that while Xerox machines and milk packing machines might actually be used by the lessee, propane tanks are not. The court reached this conclusion in part because the propane distributor is required by law and contract to maintain the tank and in part because the lessee of a propane tank cannot touch or handle the tank in any way. It takes little imagination to see that coffee makers, soft drink dispensers, water coolers and cardboard box folding machines, are all much more similar to milk packaging machines and Xerox machines in the way they are used by a lessee. Propane tanks are unique in that they are often located on a lessee's property, but cannot be used or "consumed" by the lessee. This uniqueness has caused consistent confusion and requires specific explanation either under Rule 10 or Rule 153. Industry does not care which.

The CAA contends that Rule 153 should be abandoned because tax treatment could conceivably differ under three presented hypotheticals. Industry has previously taken the position that all leased or loaned tanks should be treated at lessor's cost less depreciation. However, as a concession, and in the spirit of cooperation and compromise, Industry has agreed that if the rest of their proposed language is accepted, that it would agree tanks accompanied by a separately stated lease or rental fee would be taxed at a higher level than those merely loaned. The Industry agrees that a separate valuation is in order with regard to tanks that are owner by the gas customer. While the Court of Appeals has agreed that customers who lease their tanks from propane distributors are not the ultimate "consumers" of the tank, the same cannot be said for gas consumers who own their own tanks and who must do their own maintenance at their own risk. It is logical and proper therefore that a propane tank be taxed differently depending on whether it is owned, leased, or loaned.

Finally, the CAA continues to improperly assert that taxable situs is determinative. In essence, it is the CAA's position that because the tanks are located on the gas customer's property, the gas customer must be the ultimate "consumer" of the tank. In doing so, the CAA has once again ignored legal precedent. In the case of *Platz* v. *County of San Luis Obispo*, the Court cited *Lake Forest Community Association* v. *County of Orange* (1978) 86 Cal.App.3d. 394, as authority for its statement that "the fact that the tanks are located on the customer's property is not dispositive, because location alone does not determine character."

In conclusion, a clearly articulated Rule which defines how the Propane Industry's tanks should be valued is absolutely essential. Therefore, our recommendation is to adopt Industry's version of Rule 153 since it clearly defines how propane tanks should be valued. If the Board opposes the adoption of a new Rule (153), then we would recommend the adoption of Industry's version of Rule 10 which includes language to clarify the tax treatment of propane tanks.

B. Cons of the Alternative

Industry relies on and cites *Platz* v. *County of San Luis Obispo*. However, this is an unpublished case. In another recent, unpublished case (*Campora, Inc.* v. *Assessment Appeals Board of the County of Shasta)* regarding propane tanks, the court rendered a differing opinion. While these cases may prove the need for guidance regarding the valuation and assessment of propane tanks, the cases have little bearing on the issue at hand and apply only to the parties involved.

Following are the "Cons of the Alternative" as related to Staff's proposed language. See also Staff Recommendation, Pros of Staff Recommendation.

(1) Deleting reference to "related equipment" in section (a) of the new rule may cause confusion as to how apparatuses, gauges, meters, and other related property are treated. For example, without this reference gauges, etc., could be valued at the retail consumer level while the tank is valued at the wholesale level. In addition, providing in the Rule that these items are included within the term "LPG tank" is an essential part of determining the level of trade at which the tanks should be valued. If the tanks are the property of the gas company, these items should likewise be part of the tank and assessable at that level of trade. On the other hand, if these items are or become the property of the retail gas consumer, that is evidence that the tank has been leased or sold to the retail gas consumer.

(2) Industry's proposed draft strikes out the words "installation fees or charges; or maintenance fees or charges; or any other separately stated periodic charge for the LPG tank." The purpose of staff's language is to determine whether a tank is leased or rented by looking at the various charges made to the retail gas consumer for use or possession of the tank.

It is clear that a periodic charge is "rent" if it is so designated. Staff believes that maintenance fees, and similar periodic charges are a substitute for rent - or a pseudonym for rent. A "separately stated lease or rental fee on the tank," as proposed by Industry, alone does not determine "character" just as "the fact that the tanks are located on the customer's property is not dispositive, because location alone does not determine character" as cited by Industry (*Lake Forest Community Association* v. *County of Orange* (1978) 86 Cal.App.3d.394). All relevant facts should be considered as addressed in staff's version (Attachment A).

Industry's use of "fee on" rather than "price of" in section (b) of the rule is inconsistent with sections 6011 and 6012 of the sales and use tax law.

(3) Reference to Rule 10 is necessary since it describes trade level and its application. It also discusses leases that are six months or less, which are to be valued at the lessor's level of trade as opposed to the lessee's.

Following are the "Cons of the Alternative" as related to the CAA position, not to adopt a new rule or any specific language for purposes of clarifying trade level treatment of liquefied petroleum gas tanks. See also Alternative 1, Pros of the Alternative.

A rule should not be adopted for purposes of clarifying the treatment of a special interest property in order to determine trade level. A trade level should be determined for propane tanks on the same basis as other property. There is no justification for treating propane tanks differently than other assessable property.

C. Statutory or Regulatory Change

Action by the Board on the attached Property Tax Rule will amend Title 18 of the California Code of Regulations.

D. Administrative Impact

None

E. Fiscal Impact

1. Cost Impact

None

2. Revenue Impact

See attached Revenue Estimate.

F. Taxpayer/Customer Impact

None

G. Critical Time Frames

The lien date is January 1 for the assessment year July 1 through June 30. In order for assessors to have this guidance for the processing of the 2000-01 roll the Board should authorize publication of amendments to the Rule at its November 1999 meeting.

Prepared by: Property Taxes Department; Policy, Planning, and Standards Division

Current as of: November 19, 1999

ATTACHMENT A

"SBE STAFF VERSION"

Rule 153. LIQUEFIED PETROLEUM GAS TANKS

(a) Definition. For purposes of this regulation, the term liquefied petroleum gas tank "LPG tank" means and includes a tank used as a means of storage, delivery, or transfer of liquefied petroleum gas products. The term also includes related equipment, apparatus, gauges, meters, and other tangible property, attached to or installed on or with the tank, that is necessary to the storage, delivery or transfer of liquefied petroleum gas products.

(b) An LPG tank shall be considered leased or rented if the purchaser of the liquefied petroleum gas is required to pay: sales or use tax measured by the purchase price or lease or rental price of the tank; or installation fees or charges; or maintenance fees or charges; or any other separately stated periodic charge for the LPG tank.

(c) The ultimate consumer of an LPG tank is determined as follows:

(1) A lessee or renter of an LPG tank, as defined in subdivision (b), is the ultimate consumer of the tank for the purposes of this regulation.

(2) The owner of the LPG tank is the ultimate consumer of the tank if (i) the LPG tank is not considered leased or rented pursuant to subdivision (b) of this regulation and (ii) the LPG tank is not considered exempt business inventory in accordance with regulation 133.

(d) LPG tanks and related tangible property shall be valued at the trade level or stage of production of the ultimate consumer as defined in subdivision (c) of this regulation, and in accordance with regulations 4, 6, 8, and 10.

ATTACHMENT B

INDUSTRY VERSION
(INDUSTRY'S SUGGESTED CHANGES TO STAFF VERSION)

Rule 153. LIQUEFIED PETROLEUM GAS TANKS

(a) Definition. For purposes of this regulation, the term liquefied petroleum gas tank "LPG tank" means and includes a tank used as a means of storage, delivery, or transfer of liquefied petroleum gas products. ~~The term also includes related equipment, apparatus, gauges, meters, and other tangible property, attached to or installed on or with the tank, that is necessary to the storage, delivery or transfer of liquefied petroleum gas products.~~

(b) An LPG tank shall be considered leased or rented if the purchaser of the liquefied petroleum gas is required to pay: sales or use tax measured by the purchase price or a separately stated lease or rental ~~price of~~ fee on the tank~~; or installation fees or charges; or maintenance fees or charges; or any other separately stated periodic charge for the LPG tank~~.

(c) The ultimate consumer of an LPG tank is determined as follows:

(3) A lessee or renter of an LPG tank, as defined in subdivision (b), is the ultimate consumer of the tank for the purposes of this regulation.

(4) The owner of the LPG tank is the ultimate consumer of the tank if (i) the LPG tank is not considered leased or rented pursuant to subdivision (b) of this regulation and (ii) the LPG tank is not considered exempt business inventory in accordance with regulation 133.

(d) LPG tanks and related tangible property shall be valued at the trade level or stage of production of the ultimate consumer as defined in subdivision (c) of this regulation, and in accordance with regulations 4, 6, and 8~~, and 10~~.

ATTACHMENT C

ISSUE PAPER MATRIX

Wording Differences Between Staff, Assessors, and Industry

Item	**Paragraph**	**Source**	**Position**
1. Should a new rule (Rule 153), or any specific language, be adopted and published regarding liquefied petroleum gas (LPG) tanks?			
1.	General	CAA	CAA opposes the adoption of a new rule on defining trade level for LPG tanks.
2. If a new rule (Rule 153), or any specific language, is to be adopted and published, what language should be adopted?			
2(a)	Paragraph (a), last sentence	Industry	~~The term also includes related equipment, apparatus, gauges, meters, and other tangible property, attached to or installed on or with the tank, that is necessary to the storage, delivery or transfer of liquefied petroleum gas products.~~
2(b)	Paragraph (b)	Industry	An LPG tank shall be considered leased or rented if the purchaser of the liquefied petroleum gas is required to pay: sales or use tax measured by the purchase price <u>or a separately stated</u> lease or rental ~~price of~~ <u>fee on</u> the tank~~; or installation fees or charges; or maintenance fees or charges; or any other separately stated periodic charge for the LPG tank~~.
2(c)	Paragraph (d)	Industry	LPG tanks and related tangible property shall be valued at the trade level or stage of production of the ultimate consumer as defined in subdivision (c) of this regulation, and in accordance with regulations 4, 6, <u>and</u> 8~~, and 10~~.

BOARD OF EQUALIZATION
REVENUE ESTIMATE

ISSUE #99-051
Property Tax Rule 153, Liquefied Petroleum Gas Tanks

Proposal

Board staff proposes the creation of Property Tax Rule 153, Liquefied Petroleum Gas Tanks.

Background, Methodology, and Assumptions

Under current practice, most counties value LPG tanks at the trade level of the ultimate consumer of the gas; in a few counties, tanks that are not owned by the LPG user are valued at the trade level of the gas supplier instead of the consumer. The new rule has been proposed, in part, to eliminate the difference in treatment among counties

Under the staff version of the new rule, liquefied petroleum gas (LPG) tanks would, in general, be valued at the trade level of the ultimate consumer of the gas. In the industry version, tanks not owned by the ultimate consumer of the gas would typically be valued at the trade level of the LPG supplier.

Staff estimates that statewide there are 300,000 households that use LPG. Assuming that this count closely approximates the number of tanks owned by the fuel suppliers instead of the consumer and that the average difference in assessed value between the staff and industry proposals is no more than $100 per tank, then the total assessed value of these tanks under the industry version is $30,000,000 (300,000 x $100) lower than under the staff proposal.

Assuming that currently ten percent of the subject tanks are valued at the trade level of the supplier, then the total assessed value of the tanks under the staff proposal is, at most, $3,000,000 (300,000 x 10 percent x $100) higher than under current practice. The total assessed value under the industry proposal is $27,000,000 ($30,000,000 - $3,000,000) lower than under current practice.

Revenue Summary

Under the staff proposal, property taxes at the basic one percent property tax rate would be about $30,000 higher annually than under current practice. Property taxes under the industry proposal would be $270,000 less annually than under current practice.

Preparation

This revenue estimate was prepared by Aileen Takaha Lee, Statistics Section, Agency Planning and Research Division. The estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division, and by Mr. Richard C. Johnson, Deputy Director, Property Taxes Department. For additional information, please contact Ms. Lee at 445-0840.

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